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10 Consumer Advocacy Group, Inc.

**FILED**

AUG 14 2013

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Cien, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

**BY FAX**

13 CONSUMER ADVOCACY GROUP, INC.,  
14 in the public interest,

15 Plaintiff,

16 v.

17 DAS DISTRIBUTORS, INC., a  
18 Pennsylvania Corporation; and DOES 1-20;

19 Defendants.

CASE NO. *lv* 1303385

COMPLAINT FOR PENALTY AND  
INJUNCTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code, §*  
*25249.5, et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

20 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
21 defendant, and DOES 1-20 as follows:

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COMPLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT OF 1986 (HEALTH AND SAFETY CODE § 25249.5, ET SEQ.)

THE PARTIES

- 1  
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
3 organization qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant DAS DISTRIBUTORS, INC. ("DAS DISTRIBUTORS") is a Pennsylvania  
8 corporation, doing business in the State of California at all relevant times herein.
- 9 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
10 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
11 complaint to allege their true names and capacities when ascertained. Plaintiff is  
12 informed, believes, and thereon alleges that each fictitiously named defendant is  
13 responsible in some manner for the occurrences herein alleged and the damages caused  
14 thereby.
- 15 4. At all times mentioned herein, the term "Defendants" includes DAS DISTRIBUTORS  
16 and DOES 1-20.
- 17 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
18 times mentioned herein have conducted business within the State of California.
- 19 6. Upon information and belief, at all times relevant to this action, each of the Defendants,  
20 including DOES 1-20, was an agent, servant, or employee of each of the other  
21 Defendants. In conducting the activities alleged in this Complaint, each of the  
22 Defendants was acting within the course and scope of this agency, service, or  
23 employment, and was acting with the consent, permission, and authorization of each of  
24 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
25 were ratified and approved by every other Defendant or their officers or managing agents.  
26 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
27 wrongful conduct of each of the other Defendants.

1 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
2 Defendants was a person doing business within the meaning of Health and Safety Code  
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
4 employees at all relevant times.

5 **JURISDICTION**

- 6 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
7 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
8 those given by statute to other trial courts. This Court has jurisdiction over this action  
9 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
10 violations of Proposition 65 in any Court of competent jurisdiction.
- 11 9. This Court has jurisdiction over Defendants named herein because Defendants either  
12 reside or are located in this State or are foreign corporations authorized to do business in  
13 California, are registered with the California Secretary of State, or who do sufficient  
14 business in California, have sufficient minimum contacts with California, or otherwise  
15 intentionally avail themselves of the markets within California through their manufacture,  
16 distribution, promotion, marketing, or sale of their products within California to render  
17 the exercise of jurisdiction by the California courts permissible under traditional notions  
18 of fair play and substantial justice.
- 19 10. Venue is proper in the County of Marin because one or more of the instances of wrongful  
20 conduct occurred, and continues to occur, in the County of Marin and/or because  
21 Defendants conducted, and continue to conduct, business in the County of Marin with  
22 respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

- 24 11. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
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1 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
2 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
3 from contamination, to allow consumers to make informed choices about the products  
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
5 fit.

6 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
7 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
8 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
9 chemicals and chemical families. Proposition 65 imposes warning requirements and  
10 other controls that apply to Proposition 65-listed chemicals.

11 13. All businesses with ten (10) or more employees that operate or sell products in California  
12 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
13 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
14 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
15 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
16 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

17 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
18 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
19 "Threaten to violate" means "to create a condition in which there is a substantial  
20 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
21 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
22 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

23 15. Plaintiff identified certain practices of manufacturers and distributors of Di-*n*-butyl  
24 Phthalate ("DBP"), Diethyl Hexyl Phthalate ("DEHP"), and lead-bearing products of  
25 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed  
26 chemicals of such products without first providing clear and reasonable warnings of such  
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1 to the exposed persons prior to the time of exposure. Plaintiff later discerned that  
2 Defendants engaged in such practice.

3 16. On December 2, 2005, the Governor of California added DBP to the list of chemicals  
4 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).  
5 DBP is known to the State to cause developmental, female, and male reproductive  
6 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty  
7 (20) months after addition DBP to the list of chemicals known to the State to cause  
8 reproductive toxicity, DBP became fully subject to Proposition 65 warning requirements  
9 and discharge prohibitions.

10 17. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
11 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
12 to the list of chemicals known to the State to cause developmental male reproductive  
13 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
14 months after addition of DEHP to the list of chemicals known to the State to cause  
15 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
16 requirements and discharge prohibitions.

17 18. On February 27, 1987, the Governor of California added lead to the list of chemicals  
18 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).  
19 lead is known to the State to cause developmental, female, and male reproductive  
20 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
21 months after addition of lead to the list of chemicals known to the State to cause  
22 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements  
23 and discharge prohibitions.

24 19. On October 1, 1992, the Governor of California added lead and lead compounds to the  
25 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).  
26 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
27 after addition of lead and lead compounds to the list of chemicals known to the State to  
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1 cause cancer, lead and lead compounds became fully subject to Proposition 65 warning  
2 requirements and discharge prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

4 20. On or about October 5, 2012, Plaintiff gave notice of alleged violations of Health and  
5 Safety Code section 25249.6, concerning consumer products exposures and occupational  
6 exposures, subject to a private action to DAS DISTRIBUTORS and to the California  
7 Attorney General, County District Attorneys, and City Attorneys for each city containing  
8 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
9 occurred, concerning the product Steering Wheel Covers containing lead.

10 21. On or about November 2, 2012, Plaintiff gave notice of alleged violations of Health and  
11 Safety Code section 25249.6, concerning consumer products exposures and occupational  
12 exposures, subject to a private action to DAS DISTRIBUTORS and to the California  
13 Attorney General, County District Attorneys, and City Attorneys for each city containing  
14 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
15 occurred, concerning the product Steering Wheel Covers containing DEHP and DBP.

16 22. On or about November 19, 2012, Plaintiff gave notice of alleged violations of Health and  
17 Safety Code section 25249.6, concerning consumer products exposures and occupational  
18 exposures, subject to a private action to DAS DISTRIBUTORS and to the California  
19 Attorney General, County District Attorneys, and City Attorneys for each city containing  
20 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
21 occurred, concerning the product Steering Wheel Covers containing DEHP and DBP.

22 23. On or about November 19, 2012, Plaintiff gave notice of alleged violations of Health and  
23 Safety Code section 25249.6, concerning consumer products exposures and occupational  
24 exposures, subject to a private action to DAS DISTRIBUTORS and to the California  
25 Attorney General, County District Attorneys, and City Attorneys for each city containing  
26 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
27 occurred, concerning the product CB Radio Chargers containing lead.  
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1 24. On or about January 11, 2013, Plaintiff gave notice of alleged violations of Health and  
2 Safety Code section 25249.6, concerning consumer products exposures and occupational  
3 exposures, subject to a private action to DAS DISTRIBUTORS and to the California  
4 Attorney General, County District Attorneys, and City Attorneys for each city containing  
5 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
6 occurred, concerning the product Electrical Tape containing lead.

7 25. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
8 products involved, the likelihood that such products would cause users to suffer  
9 significant exposures to DEHP, DBP, and lead, and the corporate structure of each of the  
10 Defendants.

11 26. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
12 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
13 Plaintiff who executed the certificate had consulted with at least one person with relevant  
14 and appropriate expertise who reviewed data regarding the exposures to DEHP, DBP, and  
15 lead, the subject Proposition 65-listed chemicals of this action. Based on that information,  
16 the attorney for Plaintiff who executed the Certificate of Merit believed there was a  
17 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
18 to the Certificate of Merit served on the Attorney General the confidential factual  
19 information sufficient to establish the basis of the Certificate of Merit.

20 27. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
21 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
22 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d)*.

23 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
24 gave notices of the alleged violation to DAS DISTRIBUTORS and the public prosecutors  
25 referenced in Paragraph 20-24.

1 29. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
2 any applicable district attorney or city attorney has commenced and is diligently  
3 prosecuting an action against the Defendants.

4 **FIRST CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against DAS DISTRIBUTORS**  
6 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and**  
7 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

8 **Steering Wheel Covers**

9 30. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
10 reference paragraphs 1 through 29 of this complaint as though fully set forth herein.

11 31. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
12 distributor, promoter, or retailer of Steering Wheel Covers, which includes but is not  
13 limited to "ROAD PRO® Professional Driver Series Steering Wheel Cover, RPSW-3003  
14 ("STEERING WHEEL COVERS").

15 32. STEERING WHEEL COVERS contain Lead.

16 33. Defendants knew or should have known that lead has been identified by the State of  
17 California as a chemical known to cause cancer and reproductive toxicity and therefore  
18 was subject to Proposition 65 warning requirements. Defendants were also informed of  
19 the presence of lead in STEERING WHEEL COVERS within Plaintiff's notice of alleged  
20 violations further discussed above at Paragraph 20.

21 34. Plaintiff's allegations regarding STEERING WHEEL COVERS concerns "[c]onsumer  
22 products exposure[s]," which "is an exposure that results from a person's acquisition,  
23 purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,  
24 or any exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27,*  
25 *§ 25602(b).* STEERING WHEEL COVERS are consumer products, and, as mentioned  
26 herein, exposures to lead took place as a result of such normal and foreseeable  
27 consumption and use.



1 35. Plaintiff is informed, believes, and thereon alleges that between October 5, 2009 and the  
2 present, each of the Defendants knowingly and intentionally exposed their California  
3 consumers and users of STEERING WHEEL COVERS, which Defendants  
4 manufactured, distributed, or sold as mentioned above, to lead, without first providing  
5 any type of clear and reasonable warning of such to the exposed persons before the time  
6 of exposure. Defendants have distributed and sold STEERING WHEEL COVERS in  
7 California. Defendants know and intend that California consumers will use and consume  
8 STEERING WHEEL COVERS, thereby exposing them to lead. Defendants thereby  
9 violated Proposition 65.

10 36. Plaintiff's allegations regarding also concern "occupational exposure(s)," which are  
11 "exposures to any employee in his or her workplace," *Cal. Code Regs. tit. 27, § 25602(f)*.  
12 As mentioned herein, employees were exposed to lead in their employer's workplace as a  
13 result of handling STEERING WHEEL COVERS, without having first been given clear  
14 and reasonable warnings that such handling would cause exposure to lead.

15 37. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
16 Persons sustain exposures by handling STEERING WHEEL COVERS without wearing  
17 gloves or any other personal protective equipment, or by touching bare skin or mucous  
18 membranes with gloves after handling STEERING WHEEL COVERS, as well as  
19 through direct and indirect hand to mouth contact, hand to mucous membrane, or  
20 breathing in particulate matter dispersed from STEERING WHEEL COVERS. And as to  
21 Defendants' employees, employees may be exposed to lead in the course of their  
22 employment by handling, distributing and selling STEERING WHEEL COVERS.

23 38. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
24 Proposition 65 as to STEERING WHEEL COVERS have been ongoing and continuous  
25 to the date of the signing of this complaint, as Defendants engaged and continue to  
26 engage in conduct which violates Health and Safety Code section 25249.6, including the  
27 manufacture, distribution, promotion, and sale of STEERING WHEEL COVERS, so that  
28

1 a separate and distinct violation of Proposition 65 occurred each and every time a person  
2 was exposed to lead by STEERING WHEEL COVERS as mentioned herein.

3 39. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
4 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
5 violations alleged herein will continue to occur into the future.

6 40. Based on the allegations herein, Defendants are liable for civil penalties of up to  
7 \$2,500.00 per day per individual exposure to lead from STEERING WHEEL COVERS,  
8 pursuant to Health and Safety Code section 25249.7(b).

9 41. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
10 filing this Complaint.

11 **SECOND CAUSE OF ACTION**

12 **(By CONSUMER ADVOCACY GROUP, INC. and against DAS DISTRIBUTORS**  
13 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and**  
14 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

15 **Steering Wheel Covers**

16 42. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
17 reference paragraphs 1 through 41 of this complaint as though fully set forth herein.

18 43. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
19 distributor, promoter, or retailer of STEERING WHEEL COVERS, which includes but is  
20 not limited to "ROADPRO® Professional Driver Series Cushioned Steering Wheel  
21 Cover (fits 20"/22") RPSWD-4002, SKU 454640020 ("STEERING WHEEL  
22 COVERS").

23 44. STEERING WHEEL COVERS contain DEHP and DBP.

24 45. Defendants knew or should have known that DEHP and DBP has been identified by the  
25 State of California as chemicals known to cause cancer and reproductive toxicity and  
26 therefore was subject to Proposition 65 warning requirements. Defendants were also  
27 informed of the presence of DEHP and DBP in STEERING WHEEL COVERS within  
28 Plaintiff's notice of alleged violations further discussed above at Paragraph 21.

1 46. Plaintiff's allegations regarding STEERING WHEEL COVERS concerns "[c]onsumer  
2 products exposure[s]," which "is an exposure that results from a person's acquisition,  
3 purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,  
4 or any exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27,*  
5 *§ 25602(b)*. STEERING WHEEL COVERS are consumer products, and, as mentioned  
6 herein, exposures to DEHP and DBP took place as a result of such normal and  
7 foreseeable consumption and use.

8 47. Plaintiff's allegations regarding STEERING WHEEL COVERS also concern  
9 "occupational exposure(s)," which are "exposures to any employee in his or her  
10 workplace," *Cal. Code Regs. tit. 27, § 25602(f)*. As mentioned herein, employees were  
11 exposed to DEHP and DBP in their employer's workplace as a result of handling  
12 STEERING WHEEL COVERS, without having first being given clear and reasonable  
13 warnings that such handling would cause exposure to DEHP and DBP.

14 48. Plaintiff is informed, believes, and thereon alleges that between November 2, 2009 and  
15 the present, each of the Defendants knowingly and intentionally exposed their employees  
16 and California consumers and users of STEERING WHEEL COVERS, which  
17 Defendants manufactured, distributed, or sold as mentioned above, to DEHP and DBP,  
18 without first providing any type of clear and reasonable warning of such to the exposed  
19 persons before the time of exposure. Defendants have distributed and sold STEERING  
20 WHEEL COVERS in California. Defendants know and intend that California consumers  
21 will use and consume STEERING WHEEL COVERS, thereby exposing them to DEHP  
22 and DBP. Defendants thereby violated Proposition 65.

23 49. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
24 Persons sustain exposures by handling STEERING WHEEL COVERS without wearing  
25 gloves or any other personal protective equipment, or by touching bare skin or mucous  
26 membranes with gloves after handling STEERING WHEEL COVERS, as well as  
27 through direct and indirect hand to mouth contact, hand to mucous membrane, or  
28

- 1 breathing in particulate matter dispersed from STEERING WHEEL COVERS. And as to  
2 Defendants' employees, employees may be exposed to DEHP and DBP in the course of  
3 their employment by handling, distributing and selling STEERING WHEEL COVERS.
- 4 50. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
5 Proposition 65 as to STEERING WHEEL COVERS have been ongoing and continuous  
6 to the date of the signing of this complaint, as Defendants engaged and continue to  
7 engage in conduct which violates Health and Safety Code section 25249.6, including the  
8 manufacture, distribution, promotion, and sale of STEERING WHEEL COVERS, so that  
9 a separate and distinct violation of Proposition 65 occurred each and every time a person  
10 was exposed to DEHP and DBP by STEERING WHEEL COVERS as mentioned herein.
- 11 51. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
13 violations alleged herein will continue to occur into the future.
- 14 52. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to DEHP and DBP from STEERING WHEEL  
16 COVERS, pursuant to Health and Safety Code section 25249.7(b).
- 17 53. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
18 filing this Complaint.

19  
20 **THIRD CAUSE OF ACTION**

21 (By CONSUMER ADVOCACY GROUP, INC. and against DAS DISTRIBUTORS  
22 and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and  
23 Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

24 **Steering Wheel Covers**

- 25 54. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
26 reference paragraphs 1 through 53 of this complaint as though fully set forth herein.
- 27 55. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
28 distributor, promoter, or retailer of Steering Wheel Covers, including but not limited to

1 "ROADPRO® Professional Driver Series 18" Comfort Grip Steering Wheel Cover  
2 RPSW-3004" ("STEERING WHEEL COVERS").

3 56. STEERING WHEEL COVERS contains DEHP and DBP.

4 57. Defendants knew or should have known that lead has been identified by the State of  
5 California as a chemical known to cause cancer and reproductive toxicity and therefore  
6 was subject to Proposition 65 warning requirements. Defendants were also informed of  
7 the presence of DEHP and DBP in STEERING WHEEL COVERS within Plaintiff's  
8 notice of alleged violations further discussed above at Paragraph 22.

9 58. Plaintiff's allegations regarding STEERING WHEEL COVERS concern "[c]onsumer  
10 products exposure[s]," which "is an exposure that results from a person's acquisition,  
11 purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,  
12 or any exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27,*  
13 *§ 25602(b)*. STEERING WHEEL COVERS is a consumer product, and, as mentioned  
14 herein, exposures to DEHP and DBP took place as a result of such normal and  
15 foreseeable consumption and use.

16 59. Plaintiff is informed, believes, and thereon alleges that between November 16, 2009 and  
17 the present, each of the Defendants knowingly and intentionally exposed California  
18 consumers and users of STEERING WHEEL COVERS, which Defendants  
19 manufactured, distributed, or sold as mentioned above, to DEHP and DBP, without first  
20 providing any type of clear and reasonable warning of such to the exposed persons before  
21 the time of exposure. Defendants have distributed and sold STEERING WHEEL  
22 COVERS in California. Defendants know and intend that California consumers will use  
23 and consume STEERING WHEEL COVERS, thereby exposing them to DEHP and DBP.  
24 Defendants thereby violated Proposition 65.

25 60. Plaintiff's allegations regarding also concern "occupational exposure(s)," which are  
26 "exposures to any employee in his or her workplace," *Cal. Code Regs. tit. 27, § 25602(f)*.  
27 As mentioned herein, employees were exposed to lead in their employer's workplace as a  
28

1 result of handling STEERING WHEEL COVERS, without having first been given clear  
2 and reasonable warnings that such handling would cause exposure to DEHP and DBP.

3 61. The principal routes of exposure are through dermal contact, ingestion and inhalation.

4 Persons sustain exposures by handling STEERING WHEEL COVERS without wearing  
5 gloves or any other personal protective equipment, or by touching bare skin or mucous  
6 membranes with gloves after handling STEERING WHEEL COVERS, as well as  
7 through direct and indirect hand to mouth contact, hand to mucous membrane, or  
8 breathing in particulate matter dispersed from STEERING WHEEL COVERS. And as to  
9 Defendants' employees, employees may be exposed to DEHP and DBP in the course of  
10 their employment by handling, distributing and selling STEERING WHEEL COVERS.

11 62. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
12 Proposition 65 as to STEERING WHEEL COVERS have been ongoing and continuous  
13 to the date of the signing of this complaint, as Defendants engaged and continue to  
14 engage in conduct which violates Health and Safety Code section 25249.6, including the  
15 manufacture, distribution, promotion, and sale of STEERING WHEEL COVERS, so that  
16 a separate and distinct violation of Proposition 65 occurred each and every time a person  
17 was exposed to lead by STEERING WHEEL COVERS as mentioned herein.

18 63. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
20 violations alleged herein will continue to occur into the future.

21 64. Based on the allegations herein, Defendants are liable for civil penalties of up to  
22 \$2,500.00 per day per individual exposure to DEHP and DBP from STEERING WHEEL  
23 COVERS, pursuant to Health and Safety Code section 25249.7(b).

24 65. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
25 filing this Complaint.

1 **FOURTH CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against DAS DISTRIBUTION**  
3 **and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and**  
4 **Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

5 **CB Radio Chargers**

6 66. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
7 reference paragraphs 1 through 65 of this complaint as though fully set forth herein.

8 67. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of CB Radio Chargers, including but not limited to  
10 "ROAD PRO® Truck Spec® CB Power Cord 3-Pin, 3-Wire, TSPSCBH-3CP" ("CB  
11 RADIO CHARGERS").

12 68. CB RADIO CHARGERS contain Lead.

13 69. Defendants knew or should have known that lead has been identified by the State of  
14 California as a chemical known to cause cancer and reproductive toxicity and therefore  
15 was subject to Proposition 65 warning requirements. Defendants were also informed of  
16 the presence of lead in CB RADIO CHARGERS within Plaintiff's notice of alleged  
17 violations further discussed above at Paragraphs 23.

18 70. Plaintiff's allegations regarding CB RADIO CHARGERS concern "[c]onsumer products  
19 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
20 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
21 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
22 *25602(b)*. CB RADIO CHARGERS are consumer products, and, as mentioned herein,  
23 exposures to lead took place as a result of such normal and foreseeable consumption and  
24 use.

25 71. Plaintiff is informed, believes, and thereon alleges that between November 16, 2009 and  
26 the present, each of the Defendants knowingly and intentionally exposed California  
27 consumers and users of CB RADIO CHARGERS, which Defendants manufactured,  
28 distributed, or sold as mentioned above, to lead, without first providing any type of clear

1 and reasonable warning of such to the exposed persons before the time of exposure.

2 Defendants have distributed and sold CB RADIO CHARGERS in California.

3 Defendants know and intend that California consumers will use and consumer CB  
4 RADIO CHARGERS, thereby exposing them to lead. Defendants thereby violated  
5 Proposition 65.

6 72. The principal routes of exposure are through dermal contact, ingestion and inhalation.

7 Persons sustain exposures by handling CB RADIO CHARGERS without wearing gloves  
8 or any other personal protective equipment, or by touching bare skin or mucous  
9 membranes with gloves after handling CB RADIO CHARGERS, as well as through  
10 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in  
11 particulate matter dispersed from CB RADIO CHARGERS.

12 73. Plaintiff is informed, believes, and thereon alleges that each of Defendant's violations of

13 Proposition 65 as to CB RADIO CHARGERS has been ongoing and continuous to the  
14 date of the signing of this complaint, as Defendant engaged and continue to engage in  
15 conduct which violates Health and Safety Code section 25249.6, including the  
16 manufacture, distribution, promotion, and sale of CB RADIO CHARGERS, so that a  
17 separate and distinct violation of Proposition 65 occurred each and every time a person  
18 was exposed to lead by CB RADIO CHARGERS as mentioned herein.

19 74. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65

20 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
21 violations alleged herein will continue to occur into the future.

22 75. Based on the allegations herein, Defendant is liable for civil penalties of up to \$2,500.00

23 per day per individual exposure to lead from CB RADIO CHARGERS, pursuant to  
24 Health and Safety Code section 25249.7(b).

25 76. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
26 filing this Complaint.



1 **FIFTH CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against DAS DISTRIBUTION  
3 and DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and  
4 Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 **Electrical Tape**

6 77. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
7 reference paragraphs 1 through 76 of this complaint as though fully set forth herein.

8 78. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of Electrical Tape, including but not limited to  
10 "RoadPro® Electrical Tape ¼" x 60' (7MIL), RPHH-808, SKU# 4546429808"  
11 ("ELECTRICAL TAPE").

12 79. ELECTRICAL TAPE contains lead.

13 80. Defendants knew or should have known that lead has been identified by the State of  
14 California as a chemical known to cause cancer and reproductive toxicity and therefore  
15 was subject to Proposition 65 warning requirements. Defendants were also informed of  
16 the presence of lead in ELECTRICAL TAPE within Plaintiff's notice of alleged  
17 violations further discussed above at Paragraph 24.

18 81. Plaintiff's allegations regarding ELECTRICAL TAPE concern "[c]onsumer products  
19 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
20 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
21 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §  
22 25602(b). ELECTRICAL TAPE is a consumer product, and, as mentioned herein,  
23 exposures to lead took place as a result of such normal and foreseeable consumption and  
24 use.

25 82. Plaintiff's allegations regarding ELECTRICAL TAPE also concern "occupational  
26 exposure(s)," which are "exposures to any employee in his or her workplace," *Cal. Code*  
27 *Regs.* tit. 27, § 25602(f). As mentioned herein, employees were exposed to lead in their  
28 employer's workplace as a result of handling ELECTRICAL TAPE, without having first

1        been given clear and reasonable warnings that such handling would cause exposure to  
2        lead.

3        83. Plaintiff is informed, believes, and thereon alleges that between January 11, 2010 and the  
4        present, Defendants knowingly and intentionally exposed California consumers and users  
5        of ELECTRICAL TAPE, which Defendants manufactured, distributed, or sold as  
6        mentioned above, to lead, without first providing any type of clear and reasonable  
7        warning of such to the exposed persons before the time of exposure. Defendants have  
8        distributed and sold ELECTRICAL TAPE in California. Defendants know and intend  
9        that California consumers will use and consume ELECTRICAL TAPE, thereby exposing  
10       them to lead. Defendants thereby violated Proposition 65.

11       84. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
12       Persons sustain exposures by handling ELECTRICAL TAPE without wearing gloves or  
13       any other personal protective equipment, or by touching bare skin or mucous membranes  
14       with gloves after handling ELECTRICAL TAPE, as well as through direct and indirect  
15       hand to mouth contact, hand to mucous membrane, or breathing in particulate matter  
16       dispersed from ELECTRICAL TAPE. And as to Defendants' employees, employees may  
17       be exposed to lead in the course of their employment by handling, distributing and selling  
18       ELECTRICAL TAPE.

19       85. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
20       Proposition 65 as to ELECTRICAL TAPE has been ongoing and continuous to the date  
21       of the signing of this complaint, as Defendants engaged and continue to engage in  
22       conduct which violates Health and Safety Code section 25249.6, including the  
23       manufacture, distribution, promotion, and sale of ELECTRICAL TAPE, so that a  
24       separate and distinct violation of Proposition 65 occurred each and every time a person  
25       was exposed to lead by ELECTRICAL TAPE as mentioned herein.

1 86. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
3 violations alleged herein will continue to occur into the future.

4 87. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to lead from ELECTRICAL TAPE, pursuant  
6 to Health and Safety Code section 25249.7(b).

7 88. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
8 filing this Complaint.

9  
10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

- 12 1. A permanent injunction mandating Proposition 65-compliant warnings;  
13 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
14 3. Costs of suit;  
15 4. Reasonable attorney fees and costs; and  
16 5. Any further relief that the court may deem just and equitable.

17  
18  
19 Dated: August 13, 2013

YERUSHALMI & ASSOCIATES

20  
21 BY: 

22 Reuben Yeroushalmi  
23 Attorneys for Plaintiff,  
24 Consumer Advocacy Group, Inc.  
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